



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 16, 1998

Ms. Elizabeth Dierdorf  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR98-2696

Dear Ms. Dierdorf:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119513.

The City of Fort Worth (the "city") received an open records request for information concerning "[a]ll decisions of the Disciplinary Appeal Board from January 1, 1994, through January 1, 1997," and "[a]ll memoranda from the City Manager's Office adopting, rejecting or modifying the decisions." In response to the request, you submit to this office for review the information at issue. You contend that the requested records are excepted from required public disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted documents.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

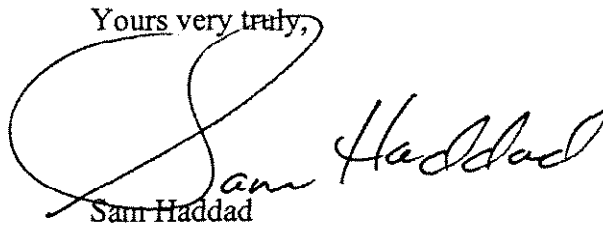
Along with the responsive information, you have submitted a "Second Amended Complaint" pending in the United States District Court for the Northern District of Texas. *Mallette v. City of Fort Worth*, Civil Action No. 4:98-CV 044-Y (N.D. Tex.). This action seeks damages under the Texas Whistle Blower Act for the requestor's client. The city has thus met its burden in establishing that litigation is pending. After reviewing the submitted materials, we further conclude that the requested information relates to the pending litigation.

In this instance, you have made the requisite showing for purposes of section 552.103(a) that the requested information is related to pending litigation. Therefore, most of the submitted records may be withheld under section 552.103(a).

Please note, however, that absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). In this regard we note that to the extent the requestor, her client or any other opposing party have seen or had access to the records at issue, there would be no justification for now withholding such information from the requestor at this time pursuant to section 552.103.<sup>1</sup> Accordingly, to the extent that such information exists, the city must release these types of documents to the requestor.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/mjc

Ref.: ID# 119513

Enclosures: Submitted documents

cc: Ms. B. C. Cornish  
1701 River Run Rd. , Ste 407  
Fort Worth, Texas 76107-6547  
(w/o enclosures)

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<sup>1</sup>In fact, it appears that some of the submitted records may have already been seen by the requestor. Furthermore, some of the submitted records are "Findings and Recommendations" and correspondence with opposing parties concerning other Disciplinary Appeals Board decisions

<sup>2</sup>In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).